

DOCKET NO. HHD-CV-18-6088970-S : SUPERIOR COURT  
GLORIA FARBER, as Executor of the : J.D. OF HARTFORD  
Estate of Hilliard Farmer  
V. : AT HARTFORD  
FORE GROUP, INC., and FOTIS DULOS : JUNE 1, 2020

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### **MEMORANDUM OF TRIAL DECISION**

These consolidated matters came before the court for trial. The court received evidence on December 3 and 4, 2019, in the form of trial testimony from John Schmitt, Joseph Urbanski, Mark Dean, Marci Richardson and Fotis Dulos (Dulos). Additionally, the court received numerous exhibits. The plaintiff in both cases is Mark Dean, Trustee of the CT RE 2019 Trust (Trust).<sup>1</sup> The defendants in the first action, bearing the docket number CV-18-6088970-S (first action), are the Fore Group, Inc. (Fore Group) and Attorney Christopher Hug, Temporary Administrator of the Estate of Fotis Dulos.<sup>2</sup> In the first action, the plaintiff asserts claims of breach of contract for repayment of multiple oral loans to Dulos by Hilliard Farber (Farber),

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<sup>1</sup> The original plaintiff was Gloria Farber, coexecutor and fiduciary of the Estate of Hilliard Farber.

<sup>2</sup> Fotis Dulos died on January 30, 2020.

unjust enrichment, and piercing the corporate veil. The second action, which bears the docket number CV-18-6088971-S (second action) advances a claim of breach of contract for Dulos' failure to repay a promissory note (note) in favor of Farber. After careful consideration of all trial testimony and the exhibits, as well as the credibility of the witnesses, the court makes the following findings of fact.

At all relevant times, Dulos was married to Jennifer Farber Dulos (Jennifer). Farber was Jennifer's father. Farber died on January 8, 2017. Gloria Farber, mother of Jennifer, and John Schmitt, Farber's attorney, were appointed co-executors of Farber's estate. In June of 2017, Jennifer commenced an action for dissolution of the marriage.

Dulos was the sole shareholder and owner of the Fore Group that since 2004 was engaged in the business of residential home construction. For some years prior to 2009 and continuing thereafter, Farber loaned money to the Fore Group upon an oral promise to repay the monies so advanced. While Dulos sporadically repaid some of the money loaned, the outstanding balance owed and due to Farber was \$1,740,000 at the time of Farber's death. The court does not credit Dulos' testimony claiming diminution of the monies so loaned either by way of checks appearing in exhibit G, which the court finds to have been fabricated by Dulos, his testimony that Farber verbally forgave the loans, Dulos' claims of simple error in listing the sums owed to Farber in the Fore Group's tax returns from 2010 to 2016 as loans rather than equity payments by Farber, or that any part of the outstanding funds should be attributed to construction work done by the Fore Group on Farber's second home.

On June 28, 2012, Dulos and Jennifer executed the note in favor of Farber in the amount of \$500,000. The note provided that Dulos and Jennifer were jointly and severally liable, therefore, for interest at a rate of three percent per annum and a maturity on July 1, 2017. While

Dulos made only interest payments on the note, the estate has elected to treat these payments as principal repayment. The amount owed on the note by Dulos as of December 3, 2019, is \$179,834.90. Accrued interest thereon at 3 percent is \$11,173.68 for a total amount owed by Dulos on the note of \$191,008.58. The court does not find credible Dulos' testimony that Farber promised orally to annually gift to him and Jennifer amounts of money equal to those sums treated as nontaxable by the Internal Revenue Code.

On March 28, 2019, Gloria and Schmitt, as co-executors of Farber's estate, assigned Dean, as trustee of the Trust, any and all rights to monies owed by the Fore Group and/or Fotis Dulos to Hilliard Farber or his estate, with all rights of recovery incidental thereto.

The court finds that the Fore Group was owned entirely by Dulos. The offices of the Fore Group were in Dulos' residence. The Fore Group had no company credit cards. Dulos paid for company expenses on his personal credit cards and thereafter reimbursed himself from the Fore Group funds. Dulos was unable to account for the basis of the reimbursements and his testimony that he kept ledgers detailing company expenses substantiating the reimbursements is not credited by the court. Dulos was the only person who made the decision as to what credit card expenses were to be reimbursed. Dulos reimbursed himself for all gasoline expenditures for motor vehicle travel without regard as to whether the travel was related to company business or not. Dulos paid Lauren Alemeida, a babysitter for the Dulos children and bookkeeper for the Fore Group, with the Fore Group's funds for hours worked regardless of whether it was for the babysitting of the Dulos children or work for the Fore Group. These payments to Almeida from the Fore Group included a three week trip to Greece. The Fore Group paid for vacation travel expenses, including airline fares and meals, of Dulos, Michelle Troconis, Dulos' then girlfriend, and Troconis' child, when she accompanied them, to Argentina, Colorado, St. Thomas, and

multiple trips to Florida. The court finds that these trips were not related to the business of the Fore Group but were purely personal trips. Dulos' testimony to the contrary was not credible. The Fore Group owned a Chevrolet Suburban which was used to transport Dulos' children by Almeida without any itemization for personal use. The Fore Group paid two law firms, Rome Clifford and Markowitz Mawhinney, for legal work done on behalf of both the Fore Group and Dulos personally. The legal work on behalf of Dulos personally included his divorce and representation in the present actions. The Fore Group paid for all legal bills and treated them as business expenses even though part of the work was done on behalf of Dulos personally rather than the Fore Group.

In light of the foregoing findings of fact, the court holds as follows. In count one of the first action the plaintiff alleges a breach of contract by the Fore Group to repay monies loaned to it by Farber. "The elements of a breach of contract [whether oral or written] are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." *Rosato v. Mascardo*, 82 Conn. App. 396, 411, 844 A.2d 893 (2004). The court holds that the Fore Group breached its agreement to repay money loaned to it by Farber who consequentially suffered damages. The court enters judgment on the first count in the amount of \$1,740,000 in favor of the plaintiff against the Fore Group.

The plaintiff alleges a claim of unjust enrichment in the second count of the first action based on the same transactions alleged in the first count. "Unjust enrichment applies wherever justice requires compensation to be given for property or services rendered under a contract, and no remedy is available by an action on the contract." *Vertex, Inc. v. Waterbury*, 278 Conn. 557, 573, 898 A.2d 178 (2006). Because the court has held that a remedy is available to the plaintiff

by an action on the contract, judgment enters in favor of the defendant as against the plaintiff in the second count.

The plaintiff asserts in the third count of the first action that he is entitled to pierce the corporate veil of the Fore Group. “When determining whether piercing the corporate veil is proper, our Supreme Court has endorsed two tests: the instrumentality test and the identity test.” *Davenport v. Quinn*, 53 Conn. App. 282, 300, 730 A.2d 1184 (1999). The court holds that the plaintiff has proven entitlement to pierce the corporate veil under the identity test. “The identity rule has been stated as follows: If a plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise.” *Id.* 300-01. Because the evidence demonstrates that Dulos was the alter ego of the Fore Group during all relevant times such that the independence of the corporation ceased to exist, the corporate veil should be pierced and the Estate of Fotis Dulos is liable for damages awarded in count one.

As to the second action, the court holds that the Estate of Fotis Dulos is liable, under the terms of the promissory note, to the plaintiff in the amount of \$179,834.90, plus interest of \$11,173.68, for a total amount of \$191,008.58. The court enters judgment accordingly.

In conclusion, the court enters judgment in the first action on the first count against the Fore Group and in favor of the plaintiff in the amount of \$1,740,000; the court enters judgment in favor of the Fore Group as against the plaintiff on count two and on count three holds the Estate of Fotis Dulos liable for the judgment entered in count one. The court enters judgment in

favor of the plaintiff as against the Estate of Fotis Dulos in the second action in the amount of \$191,008.58.

THE COURT

/s/ 435707

Cesar A. Noble  
Judge, Superior Court